

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARSHALL BENNET d/b/a BCI
INTERNATIONAL GROUP and MARK
LAMORIA,

CIVIL CASE NO. 05-40276

Plaintiffs,

v.

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

BELFOR USA GROUP, INC.,

Defendant.

_____ /

ORDER GRANTING MOTION TO DISMISS CASE

Plaintiffs first filed a complaint on August 31, 2005. On September 6 and September 20, 2005, this Court ordered Plaintiffs to show cause why this case should not be dismissed for lack of subject matter jurisdiction. Defendant filed a motion to dismiss the complaint on September 19, 2005. Finally, Plaintiffs themselves filed a motion to dismiss on September 29, 2005.

Plaintiffs originally alleged that jurisdiction over their suit was proper pursuant to the Miller Act, 40 U.S.C. § 1313 *et seq.*, which generally requires contractors for federal work projects of more than \$100,000 to post a bond. *See* 40 U.S.C. § 3131(b). Federal district courts have jurisdiction of “any action on a bond executed under any law of the United States.” 28 U.S.C. § 1352. However, in their motion to dismiss, Plaintiffs indicate that they have learned that the requirement of a bond was waived in this case. Therefore, since the case does not involve “a bond executed under any law of the United States,” this Court does not have jurisdiction.

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiffs' motion to dismiss [docket entry 10] is **GRANTED**.

IT IS FURTHER ORDERED that this action, Civil Case No. 05-40276, is **DISMISSED**.

IT IS FURTHER ORDERED that Defendant's motion to dismiss [docket entry 5] is **DENIED AS MOOT**.

SO ORDERED.

Dated: October 12, 2005

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on October 13, 2005, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Michelle L. Coakley; Eric A. Linden, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Steven L. Snyder.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
(810) 341-7845